

Senate File 515 - Introduced

SENATE FILE 515

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SSB 1074)

A BILL FOR

- 1 An Act relating to the administration of the streamlined sales
- 2 tax agreement by the department of revenue.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 423.1, Code 2011, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 0A. "*Advertising and promotional direct*
4 *mail*" means direct mail the primary purpose of which is to
5 attract public attention to a product, person, business,
6 or organization or in an attempt to sell, popularize, or
7 secure financial support for a product, person, business, or
8 organization. For purposes of this subsection, "*product*" may
9 include tangible personal property, a service, or an item
10 transferred electronically.

11 NEW SUBSECTION. 33A. "*Other direct mail*" means all direct
12 mail that is not advertising and promotional direct mail even
13 if advertising and promotional direct mail is included in the
14 same mailing. For purposes of this subsection, other direct
15 mail includes but is not limited to:

16 a. Transactional direct mail that contains personal
17 information specific to the addressee including but not limited
18 to invoices, bills, statements of account, and payroll advices.

19 b. A legally required mailing including but not limited to
20 privacy notices, tax reports, and stockholder reports.

21 c. Other nonpromotional direct mail delivered to existing or
22 former shareholders, customers, employees, or agents including
23 but not limited to newsletters and pieces of informational
24 literature.

25 Sec. 2. Section 423.1, subsection 14, Code 2011, is amended
26 to read as follows:

27 14. a. "*Direct mail*" means printed material delivered or
28 distributed by United States mail or other delivery service to
29 a mass audience or to addressees on a mailing list provided by
30 the purchaser or at the direction of the purchaser when the
31 cost of the items is not billed directly to the recipients.
32 "*Direct mail*" includes tangible personal property supplied
33 directly or indirectly by the purchaser to the direct mail
34 seller for inclusion in the package containing the printed
35 material.

1 b. "Direct mail" does not ~~include~~ include:

2 (1) ~~multiple~~ Multiple items of printed material delivered
3 to a single address.

4 (2) The development of billing information or the provision
5 of a data processing service that is more than incidental.

6 Sec. 3. Section 423.1, subsection 19, Code 2011, is amended
7 to read as follows:

8 19. *"First use of a service". A "first use of a service"*
9 *occurs, for the purposes of this chapter, ~~when a service is~~*
10 ~~*rendered, furnished, or performed in Iowa or if rendered,*~~
11 ~~*furnished, or performed outside of Iowa, when the product or*~~
12 ~~*result of the service is used in Iowa at the location at which*~~
13 ~~*the service is received. For purposes of this subsection, the*~~
14 ~~*location at which the service is received is the location at*~~
15 ~~*which the purchaser or the purchaser's donee can first make use*~~
16 ~~*of the result of the service. For purposes of this subsection,*~~
17 ~~*the location at which the seller performs the service is not*~~
18 ~~*determinative of the location at which the service is received.*~~

19 Sec. 4. Section 423.1, subsection 52, Code 2011, is amended
20 to read as follows:

21 52. *"Services"* means all acts or services rendered,
22 furnished, or performed, other than services used in processing
23 of tangible personal property for use in retail sales or
24 services, for an employer who pays the wages of an employee for
25 a valuable consideration by any person engaged in any business
26 or occupation specifically enumerated in section 423.2. The
27 tax shall be due and collectible when first use of the service
28 is ~~rendered, furnished, or performed for~~ received by the
29 ultimate user of the service.

30 Sec. 5. Section 423.2, subsection 9, Code 2011, is amended
31 to read as follows:

32 9. A tax of six percent is imposed upon the sales
33 price from any mobile telecommunications service ~~which,~~
34 including all paging services, that this state is allowed
35 to tax ~~by~~ pursuant to the provisions of the federal Mobile

1 Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C.
 2 § 116 et seq. For purposes of this subsection, taxes on mobile
 3 telecommunications service, as defined under the federal Mobile
 4 Telecommunications Sourcing Act that are deemed to be provided
 5 by the customer's home service provider, shall be paid to
 6 the taxing jurisdiction whose territorial limits encompass
 7 the customer's place of primary use, regardless of where the
 8 mobile telecommunications service originates, terminates,
 9 or passes through and shall in all other respects be taxed
 10 in conformity with the federal Mobile Telecommunications
 11 Sourcing Act. All other provisions of the federal Mobile
 12 Telecommunications Sourcing Act are adopted by the state of
 13 Iowa and incorporated into this subsection by reference. With
 14 respect to mobile telecommunications service under the federal
 15 Mobile Telecommunications Sourcing Act, the director shall, if
 16 requested, enter into agreements consistent with the provisions
 17 of the federal Act.

18 Sec. 6. Section 423.3, subsection 60, paragraph b,
 19 unnumbered paragraph 1, Code 2011, is amended to read as
 20 follows:

21 "*Durable medical equipment*" means equipment, including repair
 22 and replacement parts, and all components or attachments, but
 23 does not include mobility enhancing equipment, to which all of
 24 the following apply:

25 Sec. 7. Section 423.5, subsection 5, Code 2011, is amended
 26 to read as follows:

27 5. The use in this state of services enumerated in section
 28 423.2. This tax is applicable where ~~services are furnished in~~
 29 ~~this state or where the product or result of the service is~~
 30 first used in this state.

31 Sec. 8. Section 423.15, unnumbered paragraph 1, Code 2011,
 32 is amended to read as follows:

33 ~~All sellers obligated to collect Iowa sales or use tax~~
 34 ~~shall use the standards set out in this section to determine~~
 35 ~~where sales of products occur, excluding sales enumerated in~~

1 ~~section 423.16. These provisions apply regardless of the~~
 2 ~~characterization of a product as tangible personal property,~~
 3 ~~a digital good, or a service, excluding telecommunications~~
 4 ~~services. All sales of products, except those sales enumerated~~
 5 ~~in section 423.16, shall be sourced according to this section~~
 6 ~~by sellers obligated to collect Iowa sales and use tax. The~~
 7 ~~sourcing rules described in this section apply to sales of~~
 8 ~~tangible personal property, digital goods, and all services~~
 9 ~~other than telecommunications services. This section only~~
 10 ~~applies to determine a seller's obligation to pay or collect~~
 11 ~~and remit a sales or use tax with respect to the seller's sale~~
 12 ~~of a product. This section does not affect the obligation of a~~
 13 ~~purchaser or lessee to remit tax on the use of the product to~~
 14 ~~the taxing jurisdictions in which the use occurs. A seller's~~
 15 ~~obligation to collect Iowa sales tax or Iowa use tax only~~
 16 ~~occurs if the sale is sourced to this state. The application~~
 17 ~~of whether~~ Whether Iowa sales tax applies to sales a sale
 18 sourced to Iowa depends upon where shall be determined based
 19 on the location at which the sale is consummated by delivery
 20 or, in the case of a service, where the first use of the service
 21 occurs.

22 Sec. 9. Section 423.19, Code 2011, is amended by striking
 23 the section and inserting in lieu thereof the following:

24 **423.19 Direct mail sourcing.**

25 1. Notwithstanding section 423.15, the following provisions
 26 apply to sales of advertising and promotional direct mail:

27 a. A purchaser of advertising and promotional direct mail
 28 may provide the seller with one of the following:

29 (1) A direct pay permit.

30 (2) An agreement certificate of exemption claiming to be
 31 direct mail, or a similar written statement, if the statement
 32 is approved, authorized, or accepted by the department.

33 (3) Information showing the jurisdiction to which the
 34 advertising and promotional direct mail is to be delivered to
 35 the recipient.

1 *b.* (1) If the purchaser provides the seller a permit, a
 2 certificate of exemption, or an approved written statement
 3 pursuant to paragraph "a", subparagraph (1) or (2), then,
 4 in the absence of bad faith, the seller is relieved of the
 5 obligation to collect, pay, or remit tax on a transaction
 6 involving advertising and promotional direct mail to which the
 7 permit, certificate, or approved written statement applies. In
 8 such a transaction, the purchaser shall source the sale to the
 9 jurisdiction in which the advertising and promotional direct
 10 mail is to be delivered to the recipient and shall report and
 11 pay any tax due accordingly.

12 (2) If the purchaser provides the seller information
 13 showing the jurisdiction to which the advertising and
 14 promotional direct mail is to be delivered pursuant to
 15 paragraph "a", subparagraph (3), the seller shall source
 16 the sale to the jurisdiction in which the advertising and
 17 promotional direct mail is to be delivered and shall collect
 18 and remit the tax due accordingly. If the seller has sourced
 19 the sale according to the delivery information provided by the
 20 purchaser, then, in the absence of bad faith, the seller is
 21 relieved of any further obligation to collect tax on the sale
 22 of the advertising and promotional direct mail.

23 *c.* (1) If the purchaser fails to provide the seller with
 24 one of the items listed in paragraph "a", the sale shall be
 25 sourced pursuant to the sourcing directive described in section
 26 423.15, subsection 1, paragraph "e".

27 (2) If a sale is sourced to this state pursuant to
 28 subparagraph (1), the full amount of the tax imposed by
 29 subchapter II or III, as applicable, is due from the purchaser,
 30 notwithstanding section 423.22.

31 2. Notwithstanding section 423.15, sales of other direct
 32 mail are subject to all of the following:

33 *a.* Except as otherwise provided in this subsection, the sale
 34 of other direct mail shall be sourced pursuant to the sourcing
 35 directive described in section 423.15, subsection 1, paragraph

1 "c".

2 b. A purchaser of other direct mail may provide the seller
3 with either of the following:

4 (1) A direct pay permit.

5 (2) An agreement certificate of exemption claiming to be
6 direct mail, or a similar written statement, if the statement
7 is approved, authorized, or accepted by the department.

8 c. (1) If the purchaser provides the seller a permit, a
9 certificate of exemption, or an approved written statement
10 pursuant to paragraph "b", then, in the absence of bad faith,
11 the seller is relieved of the obligation to collect, pay, or
12 remit tax on a transaction involving other direct mail to which
13 the permit, certificate, or approved written statement applies.

14 (2) Notwithstanding paragraph "a", the sale of other direct
15 mail under the circumstances described in subparagraph (1)
16 shall be sourced to the jurisdiction in which the other direct
17 mail is to be delivered to the recipient, and the purchaser
18 shall report and pay any tax due accordingly.

19 Sec. 10. Section 423.50, subsection 4, Code 2011, is amended
20 to read as follows:

21 4. If a due date falls on a Saturday, a Sunday, legal
22 holiday, or a legal banking holiday in this state, the taxes
23 are payment, including any related payment voucher information,
24 is due on the next succeeding business day.

25 Sec. 11. Section 423.50, Code 2011, is amended by adding the
26 following new subsection:

27 NEW SUBSECTION. 5A. If the federal reserve bank is closed
28 on the due date preventing a person from being able to make an
29 automated payment, the payment shall be accepted as timely if
30 made on the next day the federal reserve bank is open.

31 EXPLANATION

32 This bill relates to the administration of the sales and use
33 taxes under the streamlined sales tax agreement.

34 Iowa is a member of the streamlined sales and use tax
35 agreement which is an effort to administer state sales and

1 use taxes in all participating states according to the same
2 simplified system. Under the agreement, Iowa must periodically
3 make changes in the administration of the sales and use taxes
4 in order to remain in compliance. The bill makes changes
5 to a number of provisions in the uniform sales and use tax
6 administration Act in Code chapter 423, subchapter IV, to more
7 closely conform to the terms of the agreement.

8 The bill amends language relating to the sourcing of taxable
9 services. Currently, the first use of a service occurs when it
10 is rendered, furnished, performed, or used in Iowa. The bill
11 provides that the location at which the service is received
12 is the location of the first use of the service and makes
13 coordinating changes related to the sourcing of services.

14 The bill amends the definition of durable medical equipment
15 to include components and attachments of the equipment.

16 The bill strikes and replaces Code section 423.19 relating
17 to the sourcing of direct mail and makes conforming changes
18 for purposes of the taxation of shipping and handling charges.
19 Currently, Iowa does not tax shipping and handling charges on
20 direct mail, but compliance with the agreement nonetheless
21 requires that these provisions be enacted in Iowa law.

22 The bill amends Code section 423.50 to include new language
23 relating to the due dates and timeliness of sales and use tax
24 payments.